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IN THE

Supreme Court of the United States

October Term, 1966

No. 1244

EDDIE ROCCO,

Petitioner,

vs.

LIFE MAGAZINE, TIME, INC., MIKE DURHAM, et al.,

Respondents.

Petition for Writ of Certiorari to the Supreme Court of the State of California and the District Court of Appeal, Second Appellate District, Division One.

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Petition for Writ of Certiorari to the Supreme Court of the State of California and the District Court of Appeal, Second Appellate District, Division One.

Eddie Rocco prays that a writ of certiorari issue to review the judgment of the District Court of Appeal, Second Appellate District, Division One, entered in above case November 22, 1966 and of the Supreme Court of California entered January 20, 1967.

Opinions Below

No written opinions were filed by either court. Minutes of the District Court of Appeal are printed in Appendix A hereto. Order of the California Supreme Court, denying hearing, is printed in Appendix A hereto. District Court granted respondents' motion to dismiss appeal and denied petitioner's request to be relieved of default. California Supreme Court denied petition for hearing.

Jurisdiction

The District Court of Appeal entered judgment in this case on November 22, 1966. The Supreme Court of California denied petition for hearing on January 20, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3) since a right has been especially set up and claimed under the Constitution of the United States.

Question Presented

The sole question presented is whether a litigant can be denied the right to appellate review in the State of California, which does provide a system of appellate review.

Constitutional Provision Involved

The constitutional provision involved is that of the Fourteenth Amendment to the United States Constitution, which provides:

> ". . . nor shall any state deprive any person of ..... property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

In a civil action, in Los Angeles Superior Court, for wrongful conversion of his property, namely negatives of photos of Jack Ruby, the court ordered judgment for the defendants.

Notice of appeal was filed January 31, 1966. Cost of transcripts was estimated at $988.30. Because petitioner did not have funds, his attorney filed a Motion For Waiver Of Prepayment Of Transcript Fees. Motion was denied April 1, 1966.

Petitioner's attorneys withdrew and petitioner, without funds for other attorneys, in pro per, moved the Dis-

trict Court of Appeal for a Motion For Waiver Of Prepayment Of Transcript Fees. On June 20, 1966, said motion was denied.

On June 30, 1966, petitioner petitioned the California Supreme Court for a hearing. Said petition was denied on August 17, 1966.

Petitioner began preparing, through the study of Supreme Court practice, to petition this Court for certiorari.

About October 18, 1966, petitioner was served a Notice Of Motion To Dismiss Appeal, to be heard in the District Court of Appeal. This was served when the 90 day period, for petitioning this Court for certiorari, was still running.

About during the first week in November, petitioner, finding himself in possession of funds for the transcripts and an attorney, through an attorney, asked respondents to allow petitioner to purchase transcripts and proceed with the appeal. The 90 day period was still running. Respondents refused.

Thereupon, petitioner filed an answer to Motion To Dismiss and asked the court for relief from default and to allow five days for the purchase of transcripts. The court denied requests and granted Motion To Dismiss on November 22, 1966.

On January 3, 1967, petitioner filed a petition for hearing in the California Supreme Court, which was denied, without opinion, January 20, 1967.

The decision of the Court of Appeal was one of surprise and in which the federal issue was born and could only first be raised in appeal to the California Supreme Court. The federal question was timely raised and supports the exercise of Supreme Court jurisdiction.

When the Supreme Court denied petition for hearing, there was a final judgment by the highest court of the state in which a decision could be had.

"There can be but one final judgment in an action, and such final judgment is one which, in effect, ends the action in court in which it was entered . . ." *Crofoot v. Crofoot,* 283 P 2d 283.

A letter from the clerk of the Ohio Supreme Court, to a litigant, refusing to accept his appeal, because of failure to pay the filing fee, was ruled a "final judgment". ". . . delegation to the clerk of a matter involving no discretion clearly suffices to make the clerk's letter a final judgment of Ohio's highest court, as required by 28 U.S.C. § 1257." *Burns v. Ohio,* 360 U.S. 257.

How Federal Question Is Presented

The federal question was raised in the petition to the California Supreme Court, pages 9 & 10, and has been certified to this Court as a part of the record:

> "ARTICLE XIV, CONSTITUTION OF THE UNITED STATES, DOES NOT CONFINE DUE PROCESS AND EQUAL PROTECTION TO SELECTIVE CLASSES OF INDIVIDUALS.
>
> ". . . nor shall any state deprive any person of life, liberty or property, without DUE PROCESS of law; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.
>
> "DUE PROCESS of law and EQUAL PROTECTION of the laws are secured if the laws operate on all alike, *Duncan v. Missouri,* 152 U.S. 382, 14 Sup. Ct. 570, 38 L. Ed. 485.
>
> "Thus, this plaintiff has been denied resort to DUE PROCESS by the Court's denial of said plaintiff's

right to appellate review, first, because he did not have the money and, second, in spite of him having the money."

Reasons for Granting the Writ

"The right of an appeal must not be lightly forfeited, and where a doubt exists as to a litigant's conduct being contumacious or wilful, an appellate court will tolerate the acts which were disruptive of the judicial process. We always prefer to resolve a cause on its merits . . ." *Tobin v. Casaus,* 128 C.A.2d 588(4).

". . . in view of the appellant's efforts to obtain funds for a reporter's transcript, we do not regard the delay as flagrant . . ." *Jeffers v. Screen Extras Guild,* 140 C.A.2d 604; 295 P 2d 417. (P. 7. Calif. Supr. Ct. petition)

The cause, herein, represents a tremendously important principle and is of general interest. It is not a private controversy for it affects great masses of people whose hopes it is that the law shall not be of one variety for the rich and another for the poor.

The American Civil Liberties Union attorney told this petitioner that vast numbers of poor people are losing a tremendous amount of money in law suits because they cannot obtain the money for expensive transcripts.

The expensive transcript seems to be a gimmick by which to defeat meritorious causes. In this cause, the superior court was told the trial would take one day. When it finally went to trial it dragged into a fifth, thus setting up the expensive transcript, which petitioner could not buy immediately.

In activities, far beyond what the average litigant will do to obtain the transcript, petitioner talked with at least

30 attorneys. In every case, petitioner was told this case cannot proceed on anything less than the full transcripts.

Petitioner's attorneys would not proceed without the transcripts, in complete form. They felt the points, to be raised on appeal, cover a very wide range of the oral proceedings at the trial.

". . . and as the appeal is predicated upon the assertion that the evidence does not support the findings, it will be necessary for this court to have the reporter's transcript of all the evidence in the case." *Haskins v. Crumley,* 152 C.A.2d 64.

California Rules of Court

Rules On Appeal Rule 45(e) "The reviewing court for good causes may relieve a party from a default occasioned by any failure to comply with these rules. . . ." (P. 7. Calif. Supr. Ct. petition).

Petitioner was preparing to assert his federal rights by petitioning this Court to order California to pay for the necessary transcripts. Of course, California does not now have the funds for this purpose. There was the time when the states did not have funds with which to pay for transcripts for indigents, in criminal actions. Then came this Court's ruling in *Griffin v. Illinois,* 351 U.S. 13. Today, the states do have the funds.

Since time was still running for petitioner to exhaust his legal remedies, when the motion to dismiss was filed, there was a denial of due process and equal protection.

Petitioner acted in good faith, was not dilatory, and pursued every available means, when he did not have the money, to buy the transcripts. Once he had the money, he was denied the right to purchase transcripts and proceed with his appeal.

Conclusion

For the foregoing reasons, petitioner respectfully urges this Court to grant this petition for a writ of certiorari.

March 30, 1967.

EDDIE ROCCO
Petitioner Pro Se.